

State of Wisconsin* DEPARTMENT OF REVENUE 0 DIVISION OF STATE AND LOCAL FINANCE
BUREAU OF UTILITY AND SPECIAL TAXES * P.O. BOX 8933 0 125 SOUTH WEBSTER STREET 0
MADISON, WI 5,3708-8933

REAL ESTATE TRANSFER NEWS January 1997

The following questions and answers are given as general interpretations of the

Wisconsin Administrative Code and Statutes. Should you have any questions,
please write to: Bureau of Utility and Special Taxes Wisconsin Department
of Revenue P.O. Box 8933
Madison, WI 53708-8933

1Q. Please explain the new exemption per sec. 77.25(8m), Stats. for
conveyances between spouses as created by 1995 WISCONSIN ACT 458.

A. The exemption applies to any conveyance between husband and wife
effective for conveyances dated on or after September 1, 1996. Note that
exemption
sec. 77.25(8), Stats. no longer applies to spousal conveyances but only between
parent and child for no or nominal consideration.

2Q. Do railroad companies need to file conveyances with the Department of
Financial Institutions even if they have filed with the Register of Deeds?

A. Yes. According to sec. 190.1 1, Stats. "Every conveyance or lease, deed
of trust, mortgage or satisfaction shall be filed in the office of the
secretary of state
..... (now the Department of Financial Institutions, DFI.) When a railroad
wants to record at both the county and DFI, a transfer return will be required
at each
location; however, only one transfer fee will be required. If the document is
first
recorded with the county and the fee paid, then when the document conveying the
same property is recorded at DFI, the transfer return is exempt from fee per
sec. 77.25(3), Stats. as confirming a prior recorded document. (Prior RETN 1/92,
Q 19.)

3Q. Does a "Deed of Trust" need a transfer return when it is supposed to be
similar to a real estate mortgage?

A. Yes. A "Deed of Trust" replaces or serves the use of a mortgage where
legal title to real property is placed with a trustee. If there is default, the
trustee would
convey the property to the lender or successful bidder. This is different from a
mortgage since a mortgage is not a conveyance of real property. For a default of
a mortgage, a deed conveying the real property interest would have to be given
by the borrower or sheriff to the lender or successful bidder. The use of
exemption sec. 77.25(10), Stats. apply to "Deeds of Trusts" when used in place
of a mortgage.

4Q. What is the Department's position on conveyances to a revocable trust since sec. 77.25(8m), Stats. was created?

A. The following is an excerpt from the 1996 CLEW Tax Workshop as presented by Attorney Neal Schmidt:

"Due to the statutory amendment of sec. 77.25(8), Stats., and analysis of recent decisions, the Department has established a policy in effect at the present time that transfers of real estate into a revocable living trust, even if there is debt on the property, will be exempt from the transfer fee. Exemption sec. 77.25(16) provides there is no fee on the transfer into a trust if the transfer from grantor to beneficiary would be exempt under some other exemption of sec. 77.25. While a trust is technically a separate legal entity, the fact that it is revocable by the grantor; and with the amendment of sec. 77.25(8), indebted real estate into a revocable trust will be exempt from the transfer fee."

5Q. The grantor or grantee's agent, Title Company or Attorney, insist the document to be recorded is exempt from the fee and return. There is no statement on the document exempting the recording from a return. Can we record the document?

A. No! A prerequisite to recording is the filing of a complete return or the filing of a document with the statutory reference exempting it entered on its face. This reference is to the exemption under sec. 77.25 Stats. It must be stated on the instrument of conveyance. See sec. 77.22(1). If the document is exempt from return and fee per sec. 77.25(1), (2), (2r), (4) or (I 1), there needs to be a

statement exempting it such as: "This document is exempt from return and fee per s. 77.25(_), Stats." The grantor and grantee have the responsibility of properly exempting the conveying document from the return.

If the document is a lease (less than 99 years) or other non-conveyance of a real property interest, a statement explaining the reason for no return should be on

the document such as: "This document is a lease of less than 99 years and not a conveyance subject to return and fee per sec. 77.21 (1), Stats." (Prior RETN 6/96, Q6. & RETN 3/95, Q 2.)

6.Q A entered into a ground lease with B for 50 years. B constructed a building on this land. B assigned this lease and sold the building to C. Is this sale of the building on leased land subject to the fee and return?

A. Yes. The definition of real estate specifically includes improvements on leased lands. See sec. 77.21 (I in), Stats. and RETN, Q 1 2, February 199 1.